IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.700 OF 2005

Anandrao Nanasaheb Suryavanshi .. Appellant

Versus

Bhausaheb Nanasaheb Suryavanshi & Anr Respondents

Mr.S.G. Surana for appellant

CORAM : P.V.KAKADE, J.

DATE : 8TH AUGUST, 2005.

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by Addl. District Judge, Kolhapur dated 7.9.2004 dismissing the appeal and confirming the judgment and order passed by Civil Judge, Junior Division, Kolhapur in Reg.Civil Suit No.657 of 1995 dismissing the suit of the plaintiff with costs.

2. I have heard the learned counsel for the

appellant. Perused the record.

3. The plaintiff had filed the suit for specific relief of perpetual injunction in substantive forms under Section 38 of the Specific Relief Act, 1963. The preliminary issue was raised by the trial court as follows :

> "Does the plaintiff prove that the compromise agreement and consent decree in Special Civil suit No.243/1/92 is not lawful and binding on him due to the provision of Indian Contract Act, 1972."

Both the parties contested the issue and the learned trial judge after hearing both the parties came to the conclusion that the suit deserves to be dismissed on the basis of findings recorded by the preliminary issue. The appeal was carried to the District Court, Kolhapur. The learned Addl. District Judge after hearing both the parties confirmed the findings recorded by the trial court and dismissed the appeal. Hence the present appeal.

4. At the outset, it must be noted that there is absolutely no substantial question of law involved in this appeal. The contention of the plaintiff was to the effect that the compromise decree in Special Civil Suit No.243/1/92 was vitiated because fraud and misrepresentation was made. It was further contended that the compromise decree was illegal due to the exclusion of the suit property in the compromise and it was also submitted that the compromise was unlawful as it related to the withdrawal of non compoundable criminal offence and hence the compromise came to be challenged.

5. After perusal of the judgments of both the courts below it is quite obvious that the plaintiff failed to establish the element of alleged fraud and misrepresentation in confirmity of the compromise on which basis the decree came to be passed. Moreover, those issues were purely question of facts, which are seen to be dealt with by both the courts below. Similarly by no stretch of imagination, it can be said that the compromise would be vitiated only because the property in question was not included therein. Similarly it was agreed between the parties that certain

criminal cases were to be withdrawn and such criminal cases were relating to non-compoundable offences. In that regard it is to be noted that to grant permission to withdrw the criminal cases, was the question of criminal court of competent jurisdiction, but it cannot be said that for that purpose the compromise entered into between the parties would be vitiated and decree passed on that basis would be rendered illegal.

. Be as it may, I am satisfied that the evidence on record is properly appreciated by both the courts below and there is no substantial question of law involved in this appeal and as such the appeal stands dismissed.